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Note by the Secretary-General

1. The attached document contains the first report of the United Nations Observer Mission in El Salvador (ONUSAL), established pursuant to Security Council resolution 693 (1991) of 20 May 1991. Appended thereto is the first report of the Director for Human Rights, whose mandate it is to verify compliance with the Agreement on Human Rights signed by the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (FMLN) at San José on 26 July 1990 (A/44/971-S/21541, annex).

2. The report was prepared during the Mission's preparatory phase and does not therefore attempt to analyse the human rights situation in El Salvador in depth but rather to establish a basis for future reports which will take up the substantive aspects of its present mandate.

3. I gratefully acknowledge the warm welcome and sincere cooperation extended to ONUSAL by the two parties signatories to the San José Agreement, which augur well for the Mission's contribution to the promotion of respect for human rights in El Salvador and to the peace process to which the parties have committed themselves.

ANNEX

First report of the United Nations Observer Mission in El Salvador

I. ESTABLISHMENT AND MANDATE OF THE MISSION

1. As part of the negotiating process which they are conducting under the auspices of the Secretary-General, in accordance with the Geneva Agreement (4 April 1990) and the Caracas agenda (21 May 1990), the Government of El Salvador and FMLN signed at San José on 26 July 1990 an Agreement on Human Rights (henceforth referred to as the Agreement) (A/44/971-S/21541, annex) which provides, inter alia, for the establishment of a United Nations verification mission to monitor nationwide, for an initial period of one year, respect for and the guarantee of human rights and fundamental freedoms. The tasks of verification include actively monitoring the human rights situation; investigating specific cases of alleged human rights violations; making recommendations; and, lastly, reporting to the Secretary-General and, through him, to the United Nations Security Council and General Assembly. The powers conferred on the Mission are very broad and include the possibility of visiting any place or establishment freely and without prior notice; receiving communications from any Salvadorian individual, group or entity and interviewing freely any individual or group; conducting direct investigations; and using the media to the extent useful for the fulfilment of its mandate. The Agreement thus assigns to the Mission a role unprecedented in the history of the United Nations.

2. Article 19 of the Agreement provided for the Mission to take up its duties as of the cessation of the armed conflict. Shortly after signing the Agreement, the two parties independently requested that the Mission be set up without waiting for a cease-fire. In December 1990, the Secretary-General informed the Security Council that it intended to propose the establishment of the United Nations Observer Mission in El Salvador (ONUSAL) to begin verification of the Agreement (S/22031). In March 1991, he sent a preliminary mission consisting of a select group of human rights experts and technical advisers to help him determine the extent to which verification activities could be conducted before the cessation of the armed conflict. The Mission received support from a small preparatory office set up in San Salvador in January 1991.

3. The preliminary mission reached the conclusion that there was a widespread desire in all sectors of opinion in El Salvador that the United Nations should commence verification of the Agreement as soon as possible, without awaiting a cease-fire. It also concluded that the risks posed by the armed conflict to the tasks of verification and to the security of personnel were not to a degree that should prevent the establishment of the Mission, as long as it exercised reasonable caution in performing its verification functions. Both the Government of El Salvador and FMLN, by letters dated 2 May, reiterated their request that the Mission be established before a cease-fire.

4. The Secretary-General endorsed the Mission's conclusions and transmitted them to the Security Council (S/22494), which on 20 May 1991 unanimously adopted resolution 693 (1991) establishing ONUSAL to monitor, as an integrated operation, all agreements concluded between the Government and FMLN. ONUSAL's initial mandate was to be to verify compliance with the San José Agreement, and the Council authorized the launching of the Mission without preconditions. The Secretary-General appointed Mr. Iqbal Riza as his Special Representative and Chief of Mission of ONUSAL and Mr. Philippe Texier as Director of the Human Rights Verification Mission provided for in the San José Agreement. Thé latter post will correspond to that of Director of the Human Rights Division within the integrated structure of ONUSAL.

5. The Headquarters Agreement with the Government of El Salvador was formalized on 23 July 1991, through an exchange of letters between the Secretary-General and the Minister for Foreign Affairs which grants the Mission all the powers provided for in the San José Agreement, determines the Mission's legal status and defines the privileges and immunities of its members and property.

6. On 30 August, by means of an exchange of letters between the Personal Representative of the Secretary-General and the FMLN representative to the United Nations, FMLN undertook to respect the rights and powers necessary for ONUSAL to carry out its activities.

II. LAUNCHING OF THE MISSION

7. ONUSAL was launched on 26 July 1991. As indicated in the report of the Secretary-General (S/22494) and in view of the fact that ONUSAL has been established in advance of a cease-fire, the Mission is taking a progressive approach to its work. During the preparatory phase, which lasts until the end of September, the Mission is concerned with: establishing offices throughout El Salvador; organizing its personnel and familiarizing them with the country's Constitution, relevant laws and administrative system; establishing contacts with the two parties at various levels; and studying, proposing and agreeing on working arrangements for fulfilling its mandate. In so doing, it is preparing to enter the second phase, in October, performing all the functions assigned to it under the San José Agreement.

8. The Mission's organizational structure at this preliminary stage is relatively simple. The Office of the Chief of Mission will provide overall political direction and will deal with political matters that may arise from the performance of verification functions. It will also prepare for the establishment of additional components consequent on further political agreements that may be signed between the parties. The Office of the Director for Human Rights will be responsible for verifying the Agreement. The Director will be assisted by a team of human rights advisers and investigators and by legal and police advisers. The Office will also have a team of educators on human rights. Each of the regional offices will be headed by a regional coordinator, assisted by human rights officers, legal officers, police investigators, military liaison officers and a political adviser.

9. By 15 September, a total of 101 international civil servants from 27 countries had joined the Mission, comprising five senior management staff, 42 human rights observers and advisers, legal advisers, educators and political affairs officers; 15 military advisers; 16 police advisers; and 23 administrative support and communications staff. When the Mission's preparatory phase ends, personnel needs will be re-evaluated and the staff assigned to the different offices and regions will be supplemented accordingly.

10. ONUSAL has already set up regional offices in San Salvador (central region), San Vicente (paracentral region), San Miguel (eastern region) and Santa Ana (western region), with suboffices in Chalatenango and Usulután (see map, appended). It also embarked immediately on an extensive programme of visits both to official institutions (ministries, the judiciary, the armed forces and local authorities) and to non-governmental organizations working in the field of human rights, as well as to marginal populations, communities of returnees and other vulnerable sectors of Salvadorian society. Towards the end of the period covered by this report, visits began to populations living in conflict zones. The purpose of the visits is to verify certain conditions in the place visited when, according to the information available, acts or situations contrary to respect for human rights may have occurred there or information useful to their investigation may be found. The presence of observers also helps to prevent acts or situations contrary to human rights from occurring, continuing or escalating. Reports of human rights violations also began to be received, and these are being transmitted to the competent authorities and given the necessary follow-up. Activities will intensify in the coming days and it is estimated that, by the time the initial phase of ONUSAL's establishment is complete, almost all the municipalities in the country will have been visited.

11. The first report of the Director of the ONUSAL Human Rights Division, covering the period 26 July-31 August 1991, is appended.

12. The report was prepared during the Mission's preparatory phase and does not therefore include an analysis of the human rights situation in El Salvador. Instead, it contains valuable information on the background to the Mission, the context in which it will have to operate and, in particular, the difficulties of verifying the San José Agreement before the cessation of the armed conflict and the resulting legal problems. It also contains a description of El Salvador's institutional structure in the area of human rights; a description of the types of violations of the San José Agreement, which will serve as a guide for classifying the reports that are received, investigated and processed; a reference to the most important cases so far referred to the Mission; and the report's conclusions.

13. It should be mentioned that the Mission is receiving support and cooperation from the Government of El Salvador and its authorities.

14. Similar support and cooperation have been received from FMLN, although technical difficulties have so far prevented the establishment of steady, smooth communication.

15. The welcome extended by Salvadorian civilian society has been equally positive. We have only to mention the unanimous agreement adopted by the Legislative Assembly on 25 July 1991 whereby the Assembly, as the representative of the sovereign will of the State, extended ONUSAL its entire support and backing.

16. The positive attitude of the Government of El Salvador and FMLN make it possible to predict realistically that the tasks entrusted to the Mission will be duly carried out. If both parties show their readiness to respect the commitments entered into in the San José Agreement and if, in addition, they contribute through their cooperation to the successful performance of the Mission's tasks, we can predict with optimism that the human rights situation in El Salvador will improve substantially. What is more, success in this area can be expected to make a positive contribution to the negotiating process aimed at restoring peace and creating the conditions necessary for democratic coexistence.

APPENDIX

First report of the Director of the Human Rights Division

I. LAUNCHING OF VERIFICATION ACTIVITIES

1. When the Human Rights Verification Mission was set up, the first step it took was to establish working arrangements with the two parties signatories to the San José Agreement.

2. A series of meetings was held with a governmental working group to define the mechanisms for processing reports of human rights violations. Although the Government has appointed the Executive Secretary of the Human Rights Commission as its liaison with the Mission, agreement was reached that the Mission will be able to directly contact the various principal organs of the State and their auxiliary services, as well as the Public Prosecutor's Office, the armed forces and local authorities. The Mission's other liaisons at the national level will be the Chief of Psychological Operations and Civilian Affairs of the Armed Forces Joint Staff and the Assistant Prosecutor for Human Rights. To this end, there is agreement that the Mission may establish links with the authorities directly competent to support the objectives pursued, whether in obtaining information or in requesting action by them, without prejudice to timely notification of the corresponding senior official or body designated for this purpose.

3. At meetings held with FMLN at Mexico City and Managua, the necessary mechanisms for contacts and liaison in the field were established and the corresponding arrangements were discussed. Meetings with both the parties were conducted in a very cordial atmosphere and in a spirit of full cooperation and it is hoped that the establishment of working arrangements will be completed in the next few days.

4. The San José Agreement stipulates that the Mission shall use the media to the extent useful for the fulfilment of its mandate. A massive public information campaign has been prepared to publicize the content and scope of the San José Agreement and the Mission's tasks. There has already been excellent, highly positive journalistic coverage.

5. The Mission is preparing to conduct its human rights education campaign, which it plans to carry out with programmes aimed at national governmental and non-governmental bodies and with mass organizations that are promoting human rights education projects in a variety of ways. Programmes will also involve institutions of both the parties which have responsibilities related to the protection and promotion of human rights. Programmes will be based on an analysis of existing activities, needs and deficiencies in the area of human rights promotion and education and will be aimed essentially at providing specific inputs into the training of national personnel, developing a human rights publicity campaign and advising on conceptual, methodological and didactic aspects of human rights promotion. ONUSAL is also working on the preparation of educational documents on human rights which will be disseminated widely among the population.

II. CONTEXT IN WHICH THE HUMAN RIGHTS VERIFICATION MISSION IN EL SALVADOR IS PERFORMING ITS TASKS

6. As expressly stipulated in the San José Agreement, the Mission will investigate acts committed or situations existing as of the date of its establishment. Its mandate therefore covers the present and future situation of human rights in El Salvador, not the past. However, in exceptional cases and as provided for in article 17 of the Agreement, the Mission will be able to transmit to the competent organs communications received concerning acts or situations which occurred before it was set up, if the case so warrants and there is new evidence which might help to solve it. The Mission will also be able to verify the current prosecution of past cases, in the light of the priority which the Agreement attaches to the right to due process. It will likewise be able to take the past as a reference point for determining whether current acts or situations, given their persistence over time, form part of a systematic practice of human rights violations inherited from the past. Except in the cases mentioned above, acts occurring before 26 July 1991 fall outside the Mission's mandate and could fall within the competence of the Commission on the Truth, whose establishment the parties agreed to in April 1991 in Mexico.

7. Human rights violations in El Salvador have attracted national and international attention. Different, and in some cases conflicting, interpretations have been given as to their causes, their scale and those responsible for them. Salvadorian society is particularly divided in its interpretation of such violations. The persistence of the armed conflict has resulted in an extreme polarization which has helped politicize the issue of human rights. In this situation, verification of the Agreement will be a difficult and delicate task and will require that the Mission play the role of educator in order to establish objectively both the obligations of the parties and their conduct in relation thereto.

8. For more than a decade, the United Nations and the Organization of American States have given priority attention to developments in the human rights situation in El Salvador. In 1981, the United Nations Commission on Human Rights appointed Professor José Antonio Pastor Ridruejo its Special Representative on El Salvador. Successive reports of the Special Representative and reports by national and foreign governmental and non-governmental organizations have documented the very serious human rights violations that have occurred in El Salvador in recent years. It is no accident therefore that the parties have attached importance to this issue in the negotiations, that the first agreement in the negotiating process concerns human rights and that ONUSAL is beginning its activities by verifying them.

9. Although acts which occurred in the past do not, save in exceptional cases, fall within the competence of the Mission, a brief description of the human rights situation since the signing of the Agreement is needed to give an idea of the situation in which ONUSAL is beginning its activities. By its resolution 1991/75 of 6 March 1991, the Commission on Human Rights noted that, despite the reduction in the number of violations of human rights and the

efforts made by the parties to improve the human rights situation, numerous politically motivated violations of human rights, such as enforced disappearances, abductions and, in particular, summary executions, are continuing in El Salvador and that a climate of intimidation persists against certain sectors of the population.

10. Although the figures provided by Salvadorian governmental and non-governmental organizations generally support this assessment, they differ as to the magnitude of the violations mentioned and the degree of responsibility of the alleged perpetrators. Non-governmental organizations also often differ among themselves in their assessments. For purposes of illustration, let us look at the figures given by human rights organizations in the following tables.

Table 1. Persons killed or injured as a result of the violence

	First six months of 1990	Second six months of 1990	First six months of 1991
Killed out of combat	206	156	152
Killed in combat	737	1 043	944
Total	923	1 219	1 096
Injured out of combat	318	327	391
Injured in combat	900	1 508	1 149
Total	1 218	1 835	1 540

Source: El Salvador Human Rights Commission (governmental).

Table 2. Unlawful arrests, enforced disappearances and extrajudicial executions

	First six months of 1990	Second six months of 1990	First six months of 1991
Unlawful arrests	702	249	367
Enforced disappearances	101	60	79
Extrajudicial executions	498	621	576

Source: El Salvador Human Rights Commission (non-governmental).

Table 3. Politically motivated murders, arrests, arrests followed by disappearance, and disappearances

	April-July 1990	August-November 1990	December 1990-March 1991
Murders	74	30	40
Arrests	322	147	193
Arrests/disappearances	23	10	8
Disappearances	41	23	35

Source: Human Rights Institute of José Simeón Cañas Central American University.

Table 4. Human rights violations by the Frente Farabundo Martí para la Liberación Nacional, August 1990-June 1991

Murders	29
Abductions	139
Threats	63

Source: Human Rights Office of the Armed Forces Joint Staff.

Table 5. Human rights violations

	1990	First six months of 1991
Arrests	208	80
Arrests/disappearances	60	22
Disappearances	102	33
Abductions attributed to FMLN	23	5
Murders attributed to FMLN	14	8
Murders attributed to death squads	53	24
Murders attributed to the armed forces	64	52
Deaths occurring in armed forces military operations a/	396	34
Deaths occurring in armed forces combat actions b/	456	285
Armed forces casualties	592	310

Source: Legal Protection Office of the Archdiocese of San Salvador.

a/ Includes FMLN combatants and the civilian population. The corresponding category was not determined because there was no on-site investigation, but most of the deaths were among the civilian population.

b/ Includes FMLN combatants and the civilian population. The corresponding category was not determined because there was no on-site investigation, but most of the deaths were of FMLN combatants.

11. In addition to reflecting an alarming human rights situation, the above figures show that human rights organizations do not use uniform criteria for classifying violations or for establishing periods within which these occur. This presents difficulties for making a comparative analysis of human rights violations based on existing sources. As a result, the Mission will make an effort to typify violations of the Agreement precisely and to establish a criterion for measuring their occurrence in time.

12. The absence of a cease-fire complicates the Mission's verification task in a variety of ways. One complication, clearly, is a juridical one related to the verification, in the midst of an armed conflict, of an agreement conceived for a peace-time situation. The legal framework which the Mission will use for verification in a war situation is described in the next section.

13. A second complication relates to the fact that the agreement is a partial one, no other political agreements having been reached on issues which in one way or another have an impact on human rights. In addition to issues related directly to human rights, there are others related to the judiciary and the armed forces. The parties had, in fact, provided for verification of the Agreement to take place only after a cease-fire and in the context of institutional reforms designed, inter alia, to ensure respect for human rights. As a result, verification of the Agreement is taking place not only in a very different military context from what was envisaged but also in a different institutional context.

14. The need to protect members of the Mission in a situation of armed conflict complicates verification of the Agreement. In his report to the Security Council, the Secretary-General said that the risks posed by the armed conflict would be acceptable. However, he also noted that certain extremist groups might attempt to intimidate Mission members. This issue received considerable attention in the Security Council, where some members let their concerns be known. Shortly before the Mission was set up, flyers of the self-styled Salvadorian Anti-Communist Front came to light which openly threatened the Mission. Other groups, such as the Crusade for Peace and Work, although different from the Front, helped arouse hostility towards ONUSAL among certain sectors by questioning its constitutionality. Both the President of the Republic and the Ministers for Foreign Affairs and Defence reported in due course that they were investigating the situation and that ONUSAL could count on all the necessary guarantees for performing its functions, for which the Mission thanked them. ONUSAL was also pleased to learn that, by a unanimous agreement adopted on 25 July 1991, the Legislative Assembly had expressed profound satisfaction at ONUSAL's establishment and had pledged it its full support.

15. The launching of verification activities while negotiations are going on and the armed conflict is continuing creates a number of additional problems for the Mission. On the one hand, it can be expected that groups will emerge that will question ONUSAL's objectivity and impartiality. This risk will require that the Mission act with caution. If it is understood by the parties and by the various sectors of Salvadorian society and if everyone makes an effort to guarantee the Mission's credibility and respect for it, that will help create a climate of détente which might permit a settlement of the conflict.

16. This latter situation itself creates difficulties. There are very high, and in some cases inordinate, expectations of the Mission. Vast numbers of Salvadorians right across the political spectrum believe that the Mission will be able to prevent, or at least punish, human rights violations. Even though

the Mission will try to fulfil the expectations which the Salvadorian people have of it, it is worth remembering that while its verification possibilities are considerable, it does not have the power to prevent violations or to punish violators. As a result, far from attempting to replace the institutions responsible for ensuring the protection and promotion of and respect for human rights, the Mission will assist Salvadorians in the effort to ensure unrestricted exercise of those rights. To that end, it will attempt to persuade the parties to modify conduct that is incompatible with the Agreement, and its sole support in that task will be the moral authority of the United Nations.

III. HUMAN RIGHTS AND HUMANITARIAN LAW IN THE CONTEXT OF THE SAN JOSE AGREEMENT

17. The Mission was not conceived to deal with violations of human rights - or of the attributes of the human person - resulting directly from the armed conflict. The intention of the parties to the San José Agreement, and the structure of the Agreement itself, corresponded to the objective of creating additional guarantees for the observance of human rights in the new era in El Salvador's history that was to begin once a cease-fire went into effect.

18. The fact that the parties requested that the Mission begin before a cease-fire was achieved does not alter the nature, the structure or the purpose of the San José Agreement, nor the Mission's mandate or the priorities that it must assign to its tasks. Their request cannot in itself be interpreted as demonstrating their intention of entrusting the Mission with a task which was not envisaged in its original mandate, namely, that of dealing systematically with cases directly linked to the armed conflict. It seems more logical to interpret that request as meaning that the parties wanted the Mission to begin to play, ahead of time, the role they had assigned to it for the stage that would follow the cease-fire, in which it was not, as a general rule, to deal with cases directly related to the hostilities.

19. The normative framework within which the Mission must act is defined by the sixth preambular paragraph of the Agreement, according to which human rights shall be understood to mean "those rights recognized by the Salvadorian legal system, including treaties to which El Salvador is a party, and by the declarations and principles on human rights and humanitarian law adopted by the United Nations and the Organization of American States". 1/

20. International human rights law and international humanitarian law are two separate legal systems, each with its own foundations and mechanisms, but they share the same goal, namely, protection of the human person. Even though the specific legal system for situations of armed conflict is international humanitarian law, the international system for the protection of human rights continues to apply concurrently during armed conflicts. 2/

21. Although in exceptional situations which threaten the life of the nation, States may take measures derogating from some of the rights recognized by international instruments, this does not authorize any derogation from rights that are considered "untouchable" (art. 4 of the International Covenant on Civil and Political Rights). These are the fundamental human rights of the human person which guarantee respect for his or her physical and mental integrity. This irreducible core of human rights constitutes a minimum standard corresponding to the lowest level of protection to which any person can aspire at any time and in any place or circumstance. 3/

22. Although there is some overlapping between the provisions of human rights instruments and those of humanitarian law treaties, the Mission's verification tasks differ from the functions entrusted to such humanitarian agencies as the International Committee of the Red Cross (ICRC) and relief agencies. 4/ It should be borne in mind that, since the conclusions and recommendations of ICRC must be kept confidential while those of the Mission are intended to be made public, it would not seem advisable for there to be any overlapping between their work in relation to acts occurring in the armed conflict.

23. This does not, however, mean that the Mission has absolutely no powers to verify and even investigate cases or situations related to the armed conflict. Both the reference to international humanitarian law in the preamble to the San José Agreement, and paragraph 18 of the Agreement authorizing the application of the Mission's procedures concurrently with other international procedures for the promotion and protection of human rights, permit the conclusion that the presence of ICRC would not be incompatible with action by the Mission in certain cases of this kind in which the minimum standard of protection of the human person is at stake.

24. It should also be recalled that, in exercise of its verification mission and of its power to take any steps it deems appropriate to promote and defend human rights (para. 13 of the Agreement), the Mission, guided by international human rights instruments, will devote special attention to observance of the rights to life, to integrity and security of the person and to personal liberty (para. 11, first part) in the continuing situation of armed conflict in El Salvador. It will also pay special attention to protection of the civilian population and the right to personal freedom of displaced persons and returnees (para. 7) and of all persons in conflict zones (para. 8).

25. For all the above reasons, the most reasonable conclusion which can be drawn at the present time is that the Mission will have to perform its task within the context and the sphere in which it was conceived, but that it will also have to deal with situations related to the armed conflict, to which international humanitarian law is applicable, only in cases which can be considered especially significant, giving top priority to protecting the human rights of the civilian population.

IV. THE SALVADORIAN INSTITUTIONAL SYSTEM

26. This first report will give a brief description of the Salvadorian institutional system, with special emphasis on those institutions having some link with the Mission's current work. This description will not be repeated in subsequent reports, except when specific analyses and recommendations are made for some of these institutions.

27. In the executive branch, the governmental Human Rights Commission, established in 1982 as an authority under the President of the Republic, receives and investigates reports of possible human rights violations and provides information on them to the victims or their relatives and to the appropriate authorities, in accordance with its by-laws and procedures. It also has a human rights education and promotion policy and a social and medical action component. It executes the foreign policy of the executive branch in the field of human rights.

28. More specifically, the Mission has noted the existence of the Criminal Investigation Commission which is under the authority of the executive branch. Despite the technical, material and professional resources of this body, there are those who feel that its dependence on the political and military authorities prevents it from cooperating effectively with the judiciary.

29. As the Mission begins its work, the legislative branch is in the midst of a major institutional reform and human rights effort, which includes ratification of the constitutional reforms agreed upon in Mexico on 27 April 1991 between the Government and FMLN. These reforms concern the armed forces, the electoral system, significant aspects of the judicial system, and mechanisms for guaranteeing human rights. This initiative, as well as the promulgation of secondary legislation or the formulation of new political agreements which expand on the Constitution in other areas, constitutes a very important step in the creation of a new institutional framework and is an encouraging sign of the desire for peace and national reconciliation.

30. In any State subject to the rule of law, the judicial branch is vitally important for the effective exercise of human rights, and the Mission has the power to offer it its support "in order to help improve the judicial procedures for the protection of human rights and increase respect for the rules of due process of law" (Agreement, para. 14 (h)). The Mission welcomes, as a praiseworthy initiative, the establishment of the Detainee Information Department, whose purpose is to keep track of detainees in order to guarantee their rights and give information to interested persons (Agreement No. 267 of the Supreme Court of Justice). The Supreme Court has a clear interest in expediting the work of this Department.

31. The Mission is aware, however, that the actual operation of the Department could be improved, in that it receives no information from the army and very little from the security forces and from justices of the peace in

conflict zones such as Chalatenango and Morazán, to the great detriment of its potential effectiveness. The Mission is interested in helping fulfil the objectives of the Detainee Information Department, which helps to provide reliable information on the circumstances of detentions and on the identity of detainees. The Mission has also taken note of other initiatives by the Supreme Court of Justice to improve the administration of justice, such as the introduction of itinerant judges, judicial assessors, prison supervision agents, a Judicial Training School, an Institute of Forensic Medicine and a Department for the Promotion, Dissemination and Study of Human Rights. The Mission will follow these measures to safeguard human rights with particular attention.

32. The Public Prosecutor's Office consists of the Fiscalía General de la República and the Procuraduría General de la República, to which is now being added the post of a National Prosecutor (Procurador Nacional) for the Protection of Human Rights who will be responsible essentially for promoting and ensuring respect for human rights. The Fiscalía General currently has an Assistant Prosecutor (Fiscal Adjunto) for Human Rights whose express mandate is to ensure respect for human rights and constitutional guarantees. The Mission will pay special attention to the work of the Public Prosecutor's Office in the field of human rights.

33. The armed forces play a leading role in the country, with the result that their decisions and conduct are decisive for the effective exercise of human rights.

34. The Mission has noted that the armed forces have established a Human Rights Office under the authority of their Joint Staff to try to correct practices by their members which represent an assault on the dignity of the human person. This initiative, taken in response to past errors and criticisms, will also warrant the closest attention in the Mission's future work, and initial contacts have therefore been made with the authorities responsible. Particular mention should be made of the almost unanimous view which all sectors of Salvadorian society have of the civil defence forces, which have acted under military orders throughout this period and are accused of abuses and of violating human rights with virtual impunity.

35. It should be mentioned that the functions of the public security forces, particularly the National Guard, the National Police and the Treasury Police, are currently twofold. On the one hand, as noted previously, they belong to the armed forces and, on the other hand, they act as auxiliary bodies of the system for the administration of justice in investigating crimes and offences which must be prosecuted officially and in performing other duties assigned to them by the law on penal procedure. It does not seem advisable to prolong this situation if, as is desired, the justice system is to become more effective in meeting the whole of society's expectations. One important point, therefore, is the constitutional reform that will separate the police from the armed forces.

36. In general, viewing the institutional order as a whole, the Mission cannot ignore the fact that many reports by the United Nations and by national and international human rights organizations have testified to the practical ineffectiveness of existing mechanisms in El Salvador for the defence, protection and promotion of human rights. This is especially important when we observe that, despite the high incidence of violations of human rights and humanitarian law, the investigation, prosecution and punishment of those responsible has been virtually non-existent, creating a perception of widespread impunity. The Mission is aware of this situation and will, in the course of its work, point out any failings it observes in all the institutions with which it comes in contact.

37. Recently, the public authorities have promoted initiatives which have a direct bearing on the issue of human rights and which take practical account of the agreements reached at the negotiating table. These initiatives point to the development of a new sensitivity to the need to improve the human rights situation. Contributing to their effectiveness and hence to their credibility in the eyes of all of Salvadorian society would appear to be a task which the Mission can carry out only with the cooperation of all the country's institutions and social sectors.

38. The Mission has observed that FMLN has a relatively stable presence in conflict zones and has a decisive influence on the life of the population. It also exerts a strong influence among certain sectors of Salvadorian society. Given this situation, the Mission was interested in finding out what kind of relations FMLN establishes in conflict zones. As is clear from the San José Agreement, the Mission is not seeking to establish any kind of symmetry between what FMLN does and what the State does within any organized community, as this is not relevant, but rather to find out what pre-established rules of conduct regulate life in conflict zones. FMLN has a Secretariat for the Promotion and Protection of Human Rights, which was set up in 1987 to file documented reports of human rights violations attributed to the Government and to investigate cases of violations attributed to FMLN in order to uphold the legitimacy of its methods of struggle. FMLN provided the Mission with a set of criteria which it applies in taking prisoners and in the treatment of prisoners. FMLN prisoners may be its own combatants who have violated the rules of international law; informers or individuals who have infiltrated its ranks; members of the armed forces captured in combat; or members of the civilian population who have committed ordinary crimes in conflict zones. In some cases, FMLN has also resorted to abduction in order to force payment of the so-called "war tax". The Mission has made it clear that abduction on any grounds is a violation of the San José Agreement. Concerning the other points, the Mission will try to find out in greater detail what criteria are applied to the treatment of prisoners. It will continue to try to clarify these and other points concerning FMLN conduct.

V. CATEGORIES OF CASES AND SITUATIONS

39. As established by the San José Agreement, the purpose of the Mission is to "investigate the human rights situation in El Salvador". According to the Agreement, "human rights" shall mean the following: (a) those rights recognized by the Salvadorian legal system, including treaties to which El Salvador is a party, in other words, the rights recognized by El Salvador's Constitution and secondary legislation and those guaranteed by the universal and regional international treaties ratified by it; 5/ and (b) those rights included in the declarations and principles on human rights and humanitarian law adopted by the United Nations and the Organization of American States, in other words, the rights contained in, inter alia, the Charter of the United Nations and the Universal Declaration of Human Rights, international humanitarian law treaties, the Charter of the Organization of American States and the American Declaration on the Rights and Duties of Man. 6/

A. Verification of observance of human rights

40. As this first report emphasizes, the priorities for international verification by the Mission are established in the San José Agreement (para. 11), according to which the Mission shall devote special attention to the following rights or groups of rights: the rights to life and to the integrity and security of the person; the right to due process; the right to personal liberty; the right to freedom of expression; and the right to freedom of association. The content of those rights for the purposes of international verification is outlined below.

1. Right to life and to the integrity and security of the person 7/

41. These rights are covered by paragraph 1 of the San José Agreement. In its international verification functions, the Mission will devote special attention to the following violations of these rights:

(a) Summary executions

42. This category covers:

(a) Executions or deaths which may have occurred in violation of the safeguards designed to protect the right to life contained in the domestic laws and the international law in force;

(b) Death threats.

(b) Enforced or involuntary disappearances

43. This category covers the abduction or arrest of a person by an agent of the State, or by a person whose action is supported or tolerated by the State, when no information is provided as to the destination or whereabouts of the victim.

(c) Abductions

44. This category will cover cases of politically motivated abduction by individuals or private groups, according to the legal provisions which create the normative framework for verification.

(d) Torture and cruel, inhuman or degrading treatment or punishment 8/

45. These practices are prohibited by the San José Agreement (para. 2 (f)) and cover all cases which may involve the following violations:

(a) Torture;

(b) Cruel, inhuman or degrading treatment or punishment;

(c) Violation of the right of anyone deprived of his liberty to be treated humanely and with the respect due to human dignity.

2. Right to due process 9/

46. The San José Agreement refers to this right in its paragraphs 11 and 14 (h) and guarantees the remedies of amparo and habeas corpus (para. 4). Verification will cover, inter alia, observance of the following rights:

(a) The right of anyone to be heard within a reasonable time by a competent, independent and impartial tribunal;

(b) The right to an effective legal remedy for the protection of fundamental rights, which includes the obligation not to obstruct the remedies of amparo and habeas corpus and not to provide false information to the judicial authority;

(c) The right to procedural guarantees, including the right to defend oneself during trial, the right to be presumed innocent and the right not to be compelled to testify against oneself;

(d) The right to justice for victims of crimes and abuse of power.

3. Right to personal liberty 10/

47. This right, including freedom of movement, is guaranteed in the San José Agreement (paras. 1, 2, 4, 7 and 8). The Mission will also verify observance of, inter alia, the following rights:

(a) The right of anyone who is threatened with deprivation of liberty to appeal to the competent judge for a decision on the lawfulness of such a threat;

(b) The right of everyone lawfully within the territory of the country to freedom of movement and freedom to choose his residence within that territory, subject only to the restrictions provided by law and in applicable international treaties.

4. Freedom of expression 11/

48. The San José Agreement (para. 6) guarantees this right. Verification will cover the following rights:

(a) Freedom of thought, expression and the press;

(b) The right to a correction or response;

(c) The right to engage in the profession of journalism.

5. Freedom of association 12/

49. This right is guaranteed by the San José Agreement (para. 5). Verification will cover the following rights:

(a) The right of everyone to freedom of association for all lawful purposes, including, inter alia, those of organizations for the protection and promotion of human rights;

(b) The right to trade union freedom, which includes the right of everyone to form and join trade unions for the protection of his interests.

B. Verification of cases involving humanitarian law 13/

50. Within the limits indicated in section III of this report, the Mission will devote attention to especially significant cases or situations related to the following violations of international humanitarian law.

1. Humane treatment

51. Violations of fundamental guarantees whereby all persons who are not participating directly in hostilities or have ceased to participate in them must be treated humanely in all circumstances.

2. Civilian population

52. The following violations, inter alia, will be given special attention:

(a) Attacks on the civilian population as such and on civilians;

(b) Acts or threats of violence whose main purpose is to intimidate the civilian population;

(c) Acts involving attacks on material goods essential to the survival of the civilian population or the obstruction of relief operations;

(d) Arbitrary relocation of the civilian population.

VI. SIGNIFICANT SITUATIONS

53. Although the Mission's tasks are in their preparatory phase, some comments are called for on a number of situations that have occurred in this period and are covered by the Mission's mandate.

A. Abductions

54. On 27 July, the Mission received a report of the abduction, on 12 July, of a well-known coffee grower in Usulután, which was attributed to an FMLN commando. According to the report, the victim met with FMLN on the day of the abduction to agree on details for the payment of a "war tax" which FMLN had been demanding from him. The victim was in poor health and required permanent medical treatment. While an FMLN leader publicly denied responsibility for the abduction, another privately admitted responsibility.

55. Although this incident occurred before the Mission was set up and before it had agreed on arrangements with FMLN for the processing of reports, the Mission contacted FMLN immediately to find out whether the report was true and expressed concern at the possible violation of the commitment made in the San José Agreement to eliminate any practice involving abductions. After a series of contacts, FMLN admitted to the Mission on 5 August that it was responsible and sent it a public communiqué issued the same day justifying abduction as a valid method for demanding payment of the war tax. In direct talks at Mexico City, the Mission urged FMLN to fulfil its commitments and rejected the practice of abduction, as well as the justifications given for it. On 24 August, the victim was released and handed over to the Auxiliary

Bishop of San Salvador who, together with ICRC, had also taken action to resolve the case satisfactorily.

56. The Mission also received another report of the abduction of a well-known leader of the Nationalist Republican Alliance (ARENA). Although it made repeated efforts to communicate with the relatives of the victim and the authors of the report in order to obtain more information, it was unable to do so. FMLN emphatically denied to ONUSAL that it had had any part in the incident. The Mission is still making efforts to shed light on the case.

57. The Mission reiterates that abduction, like the enforced disappearance of persons, is a violation of the San José Agreement, and it urges that measures be taken immediately to eliminate this practice.

B. Impact of the armed conflict on the rights of the civilian population

1. Segundo Montes community

58. On 20 August, the ONUSAL regional office in San Miguel received information about military operations carried out on 17 and 18 August in the Segundo Montes community, in which members of the civilian population were injured and their property damaged. The community, a settlement of returnees, is situated near the Torola river, on both sides of the main road leading to northern Morazán. This is a conflict zone with a large FMLN presence. According to members of the community, military units entered the community at 9.30 p.m. on 17 August, firing grenades and mortars and machine-gunning the Los Hatos and San Luis settlements. According to the same source, the next day military units took up positions in the hills near the community and carried out military actions against it. As a result, nine people were seriously wounded, including a pregnant woman who later had to be given an abortion. A further 25 people were injured in the confusion caused by the explosions and 23 more were poisoned by tear-gas bombs. A number of dwellings and animals in the community were hit by bullets or fragments or affected by explosions.

59. The armed forces claimed that the raid on Segundo Montes took place on the afternoon of 17 August when armed members of FMLN opened fire on army units from dwellings in the settlement and, later, groups of civilians armed with machetes, sickles and clubs attacked the soldiers. It also claimed that the military units were conducting operations pursuant to the constitutional order to ensure the integrity of the national territory. 14/

60. On 21 August, the Mission visited the community and talked to a number of people who had been affected by the use of tear-gas bombs and injured by bullets and fragments. It noted the traces left by the impact of bullets and fragments on dwellings and the effects of mortars and grenades landing on community property. It later requested information from various reliable

sources who had been present during the incident, including representatives of the Office of the United Nations High Commissioner for Refugees (UNHCR).

61. On the basis of all the information received and its on-site investigations, the Mission concludes that there is no decisive evidence that armed members of FMLN were in the community at the time of the incidents. Everything would seem to indicate that the purpose of the military actions was to intimidate the civilian population in order to facilitate a military operation in northern Morazán. In any case, the army's response was out of all proportion to the alleged attack by members of the community.

62. The Mission believes that acts against the civilian population such as that mentioned above violate the San José Agreement, and it appeals for an end to such acts in the future.

2. San José de las Flores community

63. The ONUSAL regional sub-office in Chalatenango was set up on 28 August. That same day, a verification team visited a number of communities in the conflict zone, including San José de las Flores, without giving advance warning. While it was visiting San José de las Flores, the team noticed the presence of FMLN combatants in the community. It was also able to detect the presence of military units not far from the community, who were conducting military operations that had begun a number of days previously.

64. The community told ONUSAL that it had long been the object of frequent acts of intimidation by military units, which would subject it to artillery bombardments and had imposed a permanent economic blockade. The military operation in the zone was stepped up on 3 September, with the result that a number of members of the community were wounded and a nine-month-old girl was killed by a bullet which hit her while she was in her own home.

65. On 4 September, members of the community gathered outside the Mission's offices to report the child's death. They later went to the main square in Chalatenango, across from where a military unit was stationed. Incidents occurred with members of the unit and, according to witnesses, from there they went to the bishopric for protection.

66. The armed forces told the Mission that the military operations being conducted in the zone form part of routine surveillance activities and can in no way be viewed as actions aimed directly at the civilian population.

67. From its investigations, the Mission concluded that there was a line of fire from the place where the military units were posted near San José de las Flores to the place where a number of members of the community received bullet wounds. However, it was unable to determine whether FMLN combatants

were in the community when the incidents occurred, although, as indicated above, a Mission team had noted the presence of FMLN combatants a few days earlier.

68. The Mission is concerned at the incidents and urges the parties to take urgent, immediate steps to prevent actions which might cause civilian casualties.

69. These two cases illustrate the difficulties of finding out the truth about incidents when the San José Agreement is being verified before the cessation of the armed conflict.

C. Right to due process

Prosecution of the Jesuit case

70. The murder of six Jesuit priests and their housekeeper and one of her daughters, which took place on 16 November 1989 on the campus of José Siméon Cañas Central American University in San Salvador, is considered one of the most glaring cases of human rights violations to have occurred in the country. Prosecution of this case can be seen as an opportunity to test the alleged impunity in the area of human rights to which different national and international sources have repeatedly drawn attention.

71. The case will soon come before a jury which, after the public hearing, will have to give a verdict. Immediately thereafter, the Fourth Criminal Judge who is in charge of the case will have to pass sentence. Of the nine accused, all of whom are soldiers, eight are in detention, including a colonel.

72. The investigation of this murder, and of other human rights violations that occurred prior to 26 July 1991, does not strictly fall within the competence of the Mission but rather, potentially, of the Commission on the Truth. However, in order to verify respect for due process in the current proceedings, the Mission will follow them closely.

VII. COMMENTS AND CONCLUSIONS

73. The purpose of this first report is to define the legal and political framework for verification based on an analysis of the San José Agreement, taking into account the fact that the Mission was set up before the parties signed an agreement on cessation of the armed conflict.

74. These circumstances have been discussed with the two parties signatories to the San José Agreement and a publicity campaign has been launched to inform Salvadorian society, through non-governmental organizations, about the scope of the Agreement.

75. The progressive deployment of the Mission throughout the territory, the visits to all sectors of society, both governmental and non-governmental, and the Mission's presence in the field reflect its desire both to fulfil the mandate established by articles 10-18 of the Agreement and by Security Council resolution 693 (1991) and to explain the content of the Agreement and the importance of the ONUSAL presence in the country. To that end, the Mission took advantage of its generally very favourable reception by the Salvadorian people, the parties to the conflict, Government institutions and civilian society at large.

76. As of the date of drafting this report, six weeks after the Mission's arrival, while it was not possible to give a detailed analysis of a particularly complex situation, it was necessary, having described the circumstances in which the Mission was set up, to define a preliminary legal framework for action, establish priorities and begin to devise a methodology for working arrangements and a programme for human rights promotion and education.

77. The desire of the Government of El Salvador and FMLN that the Mission be set up as soon as possible, even in the absence of a cease-fire, made it necessary for the Mission to analyse the scope of its powers. While the priorities set forth in paragraph 11 of the Agreement, to which a number of references are made in this report, are perfectly clear, the Mission could not ignore the persistence of the armed conflict, its impact on the overall level of violence and the need for vigilance in ensuring the protection of the human rights of the civilian population. It was not, therefore, a question of interpreting the Agreement but rather of taking into account the intention of the parties in not waiting for a cease-fire agreement to be signed before requesting verification by the Mission.

78. Nor was it feasible, in this period in which the Mission is being organized, is finding out at first hand about the country's institutions and their structure and functioning and is making its first contacts with FMLN and civilian society, to embark on a detailed analysis of the reports submitted to it. However, the significance of certain incidents that occurred in the first weeks after the Mission was set up and of certain situations affecting vulnerable civilian populations made it necessary to mention a number of cases in one section of the report.

79. The persistence of the armed conflict and, since mid-August, its escalation in certain parts of the country are creating a considerable amount of tension which affects fundamental rights that are a priority for the Mission: the rights to life and to the integrity and security of the person. Although direct investigation of the observance of human rights cannot begin in the first phase of verification, particular vigilance does however seem to be called for in especially serious situations.

80. In future reports, it will be possible to follow the progress made in implementing the Agreement since the Mission was set up. The description of the institutional framework and of the overall situation of human rights in

El Salvador marks a starting point, based on the situation existing at the time of ONUSAL's arrival. We shall not attempt, therefore, to make definitive judgements but rather, on the basis of field visits and the observation and investigation of incidents, to help improve the functioning of institutions and ensure respect for the Agreement by the two parties.

81. After it has made recommendations to the Government of El Salvador and FMLN, the Mission will be able to observe the efforts they make to ensure increasingly full observance of human rights.

82. While we cannot of course apply standards which might be used in countries with a solid tradition of respect for human rights, we shall attempt in this case to apply criteria which take the country's situation into account and shall encourage the parties to make positive changes in this area.

83. The welcome given the Mission in its first activities by the Salvadorian Government, FMLN, political parties and mass organizations and the beginnnings of cooperation with human rights bodies reveal a readiness to facilitate the Mission's verification task and to make progress towards a lasting peace.

Notes

1/ The second paragraph of the preamble to Additional Protocol II of 1977 to the Geneva Conventions of 12 August 1949 establishes a link between international human rights law and international humanitarian law relating to armed conflicts, in recalling "that international instruments relating to human rights offer a basic protection to the human person". The "Commentary" to this Protocol, published by the International Committee of the Red Cross, specifies that "international instruments relating to human rights" should be understood to mean instruments adopted by the United Nations such as the Universal Declaration of Human Rights and the Covenants derived therefrom (in particular, the International Covenant on Civil and Political Rights); instruments concerning specific aspects of the protection of human rights; and regional instruments, among which it mentions the American Convention on Human Rights. This is the first time that such a reference has appeared explicitly in a treatise on humanitarian law.

2/ Cf. General Assembly resolution 2675 (XXV) of 19 December 1970.

3/ Protocol II contains practically all the "untouchable" rights contained in the International Covenant on Civil and Political Rights. These rights are principles which have universal validity beyond any treaty obligation.

4/ Cf. article 3 of the four Geneva Conventions and article 18 of Protocol II respectively.

Notes (continued)

5/ El Salvador has ratified a number of the main universal and regional international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights of the United Nations and the American Convention on Human Rights of the Organization of American States.

6/ The term "declarations and principles" also covers other United Nations legal norms such as the Standard Minimum Rules for the Treatment of Prisoners, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions. In the area of international humanitarian law, El Salvador is a party to the four Geneva Conventions of 1949, article 3 of which applies to domestic armed conflicts, and to Additional Protocols I and II of 8 June 1977, of which the latter applies to such conflicts.

7/ Cf. Political Constitution of the Republic of El Salvador, art. 2; Universal Declaration of Human Rights, art. 3; International Covenant on Civil and Political Rights, art. 6; and American Convention on Human Rights, art. 4.

8/ Cf. Universal Declaration, art. 5; International Covenant, art. 7; American Convention, art. 5.

9/ Cf. Political Constitution, arts. 11, 12, 13, 14, 15, 16, 17 and 21; Universal Declaration, arts. 6, 7, 8, 10 and 11; International Covenant, arts. 14, 15 and 16; American Convention, arts. 8, 9, 10 and 25; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; and General Assembly resolution 40/34 of 29 November 1985.

10/ Cf. Political Constitution, arts. 2, 4, 5, 10 and 11; Universal Declaration, arts. 3, 8 and 13; International Covenant, arts. 9 and 12; and American Convention, arts. 7 and 22.

11/ Cf. Political Constitution, art. 6; Universal Declaration, art. 19; International Covenant, art. 19; and American Convention, arts. 13 and 14.

12/ Cf. Political Constitution, arts. 7 and 47; Universal Declaration, art. 20; International Covenant, art. 22; and American Convention, art. 16.

13/ Cf. article 3 of the four Geneva Conventions of 12 August 1949; articles 4, 13, 14 and 17 of Additional Protocol II; and General Assembly resolution 2675 (XXV) of 9 December 1970.

14/ The armed forces also reported an incident that occurred on 25 August, in which a soldier who was seriously wounded died while he was being transferred in a military ambulance. ONUSAL, which has received very conflicting versions of the incident, is following an investigation into it.

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